

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CLARICE ZIEBARTH,	)	
	)	<b>IC 2000-010891</b>
Claimant,	)	<b>IC 2005-009328</b>
v.	)	
	)	
BECHTEL BWXT IDAHO, LLC,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Employer,	)	<b>AND RECOMMENDATION</b>
and	)	
	)	
EMPLOYERS INSURANCE OF WAUSAU,	)	
	)	<b>FILED APRIL 6 2007</b>
Surety,	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Pocatello on November 29, 2006. Claimant appeared *pro se*. Monte Whittier represented Defendants. The parties presented evidence. No post-hearing depositions were taken. The parties submitted briefs. The case came under advisement on March 1, 2007. It is now ready for decision.

**ISSUE**

After due notice and by agreement of the parties at hearing, the issues to be resolved are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether Claimant's condition is due in whole or in part to a subsequent intervening cause; and
3. Whether and to what extent Claimant is entitled to:
  - a. temporary disability;
  - b. permanent partial impairment;
  - c. permanent disability in excess of impairment; and
  - d. medical care benefits.

## **CONTENTIONS OF THE PARTIES**

Claimant contends she suffered a right arm injury during a blood draw at the beginning of her employment. She suffered additional injuries as a result of ultrasound treatment to that arm. She has residual pain.

Defendants contend Claimant suffered a mild hematoma as a result of the blood draw. The condition resolved within a few weeks. Claimant's complaints thereafter are unrelated to the blood draw, to any treatment received related to the hematoma, or to any job-related event or circumstance.

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant and occupational medicine physician Paul W. Johns, M.D.; and
2. Defendants' Exhibits A – L.

(Claimant offered proposed exhibits marked 1 – 23. Defendants objected upon Claimant's failure to identify these documents beforehand as required by J.R.P. 10. The Referee reserved ruling upon Defendants' objection. Upon *in camera* examination of the proposed exhibits, these documents – and Claimant's handwritten notes on them – are largely cumulative of Claimant's testimony at hearing, or of medical records in evidence. The remaining documents are not relevant or are unduly prejudicial. Regardless, for noncompliance with J.R.P. 10, Defendants' objection is sustained.)

After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant began working as a temporary maintenance worker. She was given the opportunity to become a regular employee. A blood test was required and performed on March 13, 2000. During or after the blood draw some blood leaked under the skin. She suffered a hematoma – a bruise – on her arm of about three centimeters by two centimeters in size. Such a bruise is not uncommon.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2**

2. Claimant was treated with cold packs and later with heat. By April 3, 2000, the bruise had resolved. Claimant complained of arm pain. She described additional symptoms.

3. On September 20, 2000, the doctor discharged her. The bruise had resolved completely. Claimant continued to complain of arm pain.

4. She returned for treatment in February 2001. She underwent ultrasound treatment to provide heat to help relieve her arm complaints.

5. On May 14, 2004, Claimant underwent surgery. A radial tunnel release was performed.

### **DISCUSSION AND FURTHER FINDINGS OF FACT**

6. A claimant must prove she was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995).

7. Claimant established, and Defendants do not dispute, that she suffered a hematoma and was entitled to medical care benefits until it resolved.

8. All symptoms or injury related to the blood draw resolved by April 3, 2000. Any medical care provided thereafter was unrelated to the blood draw.

9. Claimant failed to show it likely that any complaints after April 3, 2000 were related to the blood draw or ultrasound treatment.

10. Claimant sincerely believes her arm complaints all arise from the blood draw and ultrasound treatment. Claimant's sincerely held beliefs do not constitute evidence of causation

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 3**

in the absence of supporting medical opinion.

11. Claimant failed to show any temporary disability from work was related to the blood draw or the ultrasound treatment.

12. Claimant failed to show she suffered any permanent impairment related to the blood draw or the ultrasound treatment. Hence, there can be no permanent disability award.

### **CONCLUSIONS OF LAW**

1. Claimant is entitled to medical benefits from March 13 to April 3, 2000.
2. She failed to show she is entitled to either income or medical benefits thereafter.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 26<sup>TH</sup> day of March, 2007.

INDUSTRIAL COMMISSION

ATTEST:

/S/\_\_\_\_\_  
Douglas A. Donohue, Referee

/S/\_\_\_\_\_  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>TH</sup> day of APRIL, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Clarice Ziebarth  
377 South 1100 West  
Pingree, ID 83262

Monte R. Whittier  
P.O. Box 6358  
Boise, ID 83707

db

/S/\_\_\_\_\_

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CLARICE ZIEBARTH,	)	
	)	<b>IC 2000-010891</b>
Claimant,	)	<b>IC 2005-009328</b>
v.	)	
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BECHTEL BWXT IDAHO, LLC,	)	<b>ORDER</b>
	)	
Employer,	)	
and	)	
	)	<b>FILED APRIL 6 2007</b>
EMPLOYERS INSURANCE OF WAUSAU,	)	
	)	
Surety,	)	
Defendants.	)	
	)	

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Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant is entitled to medical benefits from March 13 to April 3, 2000.
2. She failed to show she is entitled to either income or medical benefits thereafter.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 6<sup>TH</sup> day of APRIL, 2007.

INDUSTRIAL COMMISSION

/S/\_\_\_\_\_  
James F. Kile, Chairman

/S/\_\_\_\_\_  
R. D. Maynard, Commissioner

/S/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 6<sup>TH</sup> day of APRIL, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

Clarice Ziebarth  
377 South 1100 West  
Pingree, ID 83262

Monte R. Whittier  
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